34400 SERVICE DATE - MARCH 15, 2004
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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-167 (Sub-No. 1094)A

CHELSEA PROPERTY OWNERS–ABANDONMENT–PORTION OF THE CONSOLIDATED RAIL CORPORATION'S WEST 30TH STREET SECONDARY TRACK IN NEW YORK, NY

Decided: March 12, 2004

In a decision served on October 7, 2003, the Board granted a joint request of the City of New York (the City) and Chelsea Property Owners (CPO) and ordered that this proceeding be held in abeyance for 90 days, until January 5, 2004. On October 22, 2003, Forty Plus Foundation (Forty Plus) and Manhattan Central Railway Systems, LLC (MCRS), appealed the abeyance decision. Without ruling on the appeal, the Board, in a decision served on January 7, 2004, granted the City's request to continue holding the proceeding in abeyance for another 90 days, until April 5, 2004. In this decision, the Board is denying the appeal.

Forty Plus, a "not for profit out-placement employment support organization," seeks to reactivate rail service over Consolidated Rail Corporation's (Conrail) Highline, a 1.45-mile rail line that extends between West 34th Street and Gansevoort Street in the Borough of Manhattan, NY. The Highline is elevated on a steel and concrete viaduct that was constructed in 1930. Conrail operated over the Highline pursuant to easements whose termination clauses require Conrail to absorb the cost of demolishing the viaduct. An abandonment constitutes termination under the easements.

In 1992, the Interstate Commerce Commission (ICC) at CPO's request agreed to withdraw its jurisdiction over the Highline.[1] CPO, whose members own the property underlying the Highline, sought the withdrawal so that its members could pursue the condemnation and demolition of the Highline viaduct. The ICC conditioned its adverse abandonment authorization on CPO agreeing to indemnify Conrail for all demolition costs in excess of $7 million and posting "an appropriate surety bond or similar security" to ensure payment. Chelsea at 792 and 794.

On August 14, 2002, CPO filed a motion requesting that an order be issued finding that a settlement agreement CPO negotiated with involved railroad and government interests, including the

[1] Chelsea Property Owners–Aban.–The Consol. R. Corp., 8 I.C.C.2d 773 (1992) (Chelsea), aff'd sub nom. Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994).

City, satisfies the indemnity condition.[2] Friends of the High Line, Inc. (Friends), filed a reply and a petition to reopen the Chelsea decision, and the City subsequently filed an application for a Certificate of Interim Trail Use. A public hearing was held in New York City on July 24, 2003, and the negotiations that led to the abeyance request at issue here ensued.

In a post-hearing brief, filed on September 5, 2003, Forty Plus states that it formed MCRS, a for profit company, to operate the Highline, that it secured the services of the New York Cross Harbor Railroad Terminal Corporation, to assist in managing and planning for the new operation, and that Robotic Rail Way Systems, Inc., "a developer, manufacturer, and manager of state-of-the art 'intermodal' rail freight technology," will be an investment and management partner. Forty Plus claims that the Highline can operate profitably and that its reactivation will produce 100 permanent full time jobs, assist over 1,000 unemployed New Yorkers to secure gainful employment, increase the adjacent landowners' property values without rezoning, reduce traffic congestion on the City's streets, and result in more public parks and recreational facilities. Forty Plus requests that the Board exercise its discretion to encourage Conrail to enter into voluntary negotiations for the sale or subsidized operation of the Highline under the offer of assistance (OFA) procedures of 49 U.S.C. 10904.

In its appeal, Forty Plus contends that City and CPO failed to give proper notice of the abeyance request. According to Forty Plus, the letter-request was filed with the Board on October 2, 2003, but it was not consulted and remained unaware of the request until it received a copy in the mail on October 7, 2003, the day after the abeyance request was granted. Additionally, Forty Plus argues that the letter-request incorrectly certified that the parties did not oppose holding the proceeding in abeyance.

Forty Plus argues that this proceeding effectively has been held in abeyance since the ICC issued the Chelsea decision in 1992. The abeyance decision, Forty Plus argues, is contrary to the public interest because it will further contribute to a potentially great waste of resources and perpetuate "the current state of limbo" surrounding the Highline. Asserting that demolition and trail use are subordinate to the Board's statutory duty to preserve and promote continued rail service, Forty Plus requests that the abeyance decision be revoked, that any further extensions of the abeyance be denied, and that a decision leading to the reactivation of the Highline as a Class III shortline railroad be issued.

Parties to Board proceedings are not required to give each other advance notice of the pleadings they intend to file. Nor does the record support Forty Plus' contention that the City and

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[2] Rail interests include Conrail, Conrail Inc., New York Central Lines, LLC, and CSX Corporation and CSX Transportation, Inc. (CSX). Beside the City, government interests include the New York City Economic Development Corporation, the New York Convention Center Development Corporation, the Metropolitan Transportation Authority, and the Triborough Bridge and Tunnel Authority.

CPO failed to comply with the Board's service rules. The request to hold in abeyance was served on the Board in person and on the other parties by mail. This is consistent with 49 CFR 1104.12, which specifies that documents may be served on the Board in person and on the other parties by first-class or express mail if personal service is not feasible. And while the City and CPO did not explain why personal service on other parties was not feasible, their failure did not preclude the timely filing of this appeal. Finally, the request stated, and the Board's decision specified, that Friends, CSX, and Conrail were not opposed to holding the proceeding in abeyance. There was nothing in the request to suggest the same for Forty Plus or any of the other parties.

Forty Plus requests that the abeyance decision be revoked and that Conrail be encouraged to negotiate for the sale or subsidized operation of the Highline. The Board favors the private resolution of disputes wherever possible and has actively encouraged the parties to negotiate a settlement here. Forty Plus contends that the settlement being negotiated would not be in the public interest, but fails to demonstrate how the Board's decisions holding the proceeding in abeyance to permit negotiations have prevented Forty Plus from pursuing efforts directed at restoring rail service over the Highline. Forty Plus' appeal of the October 7 abeyance decision will be denied, and the January 7 decision holding the proceeding in abeyance until April 5, 2004, will be affirmed.

This decision will not affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The appeal of the October 7, 2003 abeyance decision is denied, and the January 7, 2004 decision is affirmed.

2. This decision is effective on its service date.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary